KARPAL SINGH

v.

PUBLIC PROSECUTOR

HIGH COURT MALAYA, IPOH
ANUAR ZAINAL ABIDIN J
[CRIMINAL APPLICATION NO. 32 OF 1985]
16 JANUARY 1986

CRIMINAL LAW AND PROCEDURE: *Alleged offence under s. 27(5)(a) of the Police Act 1967 - Warrant of arrest issued by Magistrate's Court - Setting aside - Whether Court had authority to issue - Penalty under s. 27(8) - Summons or warrant - Power of Court to issue warrant - Section 47 of Criminal Procedure Code - Strict procedure to be followed in criminal cases.*

The applicant is alleged to have committed an offence under s. 27(5)(a) of the Police Act 1967 ("the Act") on 30 August 1984 by being a member of an illegal assembly at a Chinese Assembly Hall at Kopisan Baru, Gopeng, Kampar, Perak. On 1 October 1985, the police applied for a warrant of arrest against the applicant which warrant was issued by the Kampar Magistrate's Court on the same day. The applicant was later arrested at Georgetown Police Station on 25 October 1985. The applicant was released on police bail subject to the condition that he presented himself at the Kampar Magistrate's Court on 16 November 1985.

The applicant first applied to the Penang High Court, to have the warrant set aside but the Judge declined to exercise his jurisdiction on the ground that the proper forum to hear the application should be the High Court in Ipoh. The applicant then applied to this Court to have the warrant of arrest set aside on the ground that this warrant had been issued without any legal authority.

This issue in this application is whether in the circumstances the warrant was issued legally or illegally.

Held:

[1] In order to issue the proper process to compel the attendance of an accused person, it is incumbent upon the Court first to determine whether the offence is one that falls under a summons or warrant case.

[2] Section 2 of the Criminal Procedure Code ("the Code") provides for the definition of a summons or warrant case. The offence in this case being punishable by s. 27(8) of the Act carries the penalty of a fine not exceeding RM500 or an imprisonment term not exceeding six months or both. It is clear that this is a summons and not a warrant case and therefore a summons should in the first instance be issued and not a warrant.

[3] The only provision which gives the Court power to issue a warrant instead of a summons is s. 47 of the Code. In this case, the relevant paragraph is para. (a) where instead of a summons the Court issues a warrant. However, before the Court exercises this power, it should satisfy itself that there are reasons to believe that the defendant has absconded or that the defendant will not obey the said summons.

[4] No reasons were given by the Magistrate as to why the warrant and not a summons was required. There is no indication that the applicant had absconded or that he would not obey a summons. In the event, the issue of a warrant is wrong in law and therefore illegal.

[5] It is the cardinal principle of law that in criminal cases the provisions of the law must strictly be followed.

[Warrant of arrest set aside.]

Cases referred to:
Perumal v. PP [1970] 2 MLJ 265
Saminathan v. PP [1937] 2 MLJ 36
Saw Kim Hai v. R [1956] MLJ 21

Legislation referred to:
Criminal Procedure Code, s. 47
Police Act 1967, ss. 27(5)(a), (8), (6)
Subordinate Courts Act 1948, s. 85

For the Karpal Singh - in person.
For the respondent - Madam Su (DPP)

JUDGMENT

Anuar Zainal Abidin J:

The applicant is alleged to have committed an offence under s. 27(5)(a) of the Police Act 1967 on 30 August 1984 by being a member of an illegal assembly at a Chinese Assembly Hall at Kopisan Baru Gopeng, Kampar, Perak. On 1 October 1985 the police applied for a warrant of arrest against the applicant which warrant was issued by the Kampar Magistrate's Court on the same day and the applicant was later arrested at Georgetown Police Station on 25 October 1985. The applicant was released on police bail subject to the condition that he presents himself at the Kampar Magistrate's Court on 16 November 1985.

The applicant first applied to the High Court at Penang to have the warrant of arrest set aside. However, the learned Judge declined to exercise his jurisdiction on the ground that the proper forum to hear the application should be the High Court in Ipoh. In the event the applicant now applies to this Court to have the warrant of arrest set aside on the grounds that the said warrant of arrest had been issued without any legal authority.

Having heard the application and the learned Deputy Public Prosecutor, I allowed the application.

The learned Deputy Public Prosecutor submitted that the legality or illegality of the warrant should not be an issue before this Court as s. 85 of the Subordinate Courts Act 1948 confers jurisdiction upon the Magistrate's Court to hear the case. She referred to the cases of *Perumal v. PP* [1970] 2 MLJ 265, *Saminathan v. PP* [1937] 2 MLJ 36 and *Saw Kim Hai v. R.* [1956] MLJ 21 as authorities.

With respect, to my mind, the issue in this application is not whether the Magistrate's Court has jurisdiction to try the offence where the accused had been illegally arrested. The issue is whether in the circumstances the warrant was issued legally or not. The authorities referred to by the learned Deputy Public Prosecutor are therefore not relevant.

In order to issue the proper process to compel the attendance of an accused person, it is incumbent upon the Court first to determine whether the offence is one that falls under a summons or warrant case. Section 2 of the Criminal Procedure Code provides for the definition of a summons or warrant case. A 'Summons case means a case relating to an offence and not being a warrant case' and a 'Warrant case means a case relating to an offence punishable with death or with imprisonment for a term exceeding six months'.

The offence in this case being punishable by s. 27(8) of the Police Act 1967 carries the penalty of a fine not exceeding RM500 or an imprisonment term **not** exceeding six months or both. (emphasis is mine). It is clear that this is a summons case and not a warrant case and therefore a summons should in the first instance issue and not a warrant.

Is there then any legal provision to justify the issue of a warrant instead of a summons?

Section 27(6) of the Police Act 1967 empowers any police officer to arrest a person when there are reasonable suspicions that the said person is committing the offence in question. No warrant is required.

The only provision which gives the Court power to issue a warrant instead of a summons is s. 47 of the Criminal Procedure Code. Paragraph (a) is relevant to the present case where instead of a summons the Court issues a warrant. However, before the Court exercises this power, it should satisfy itself that there are reasons to believe the defendant has absconded or that the defendant will not obey the said summons.

From the unrebutted affidavit of the applicant in the present case, it is shown that for a period of over one year i.e., from the date of the alleged offence until the date when the warrant was applied for, the applicant was never questioned nor was he apprehended by the police. He was not aware of any police investigation into the alleged offence. He had therefore no cause to abscond. The application for the warrant merely alleges that an investigation conducted pursuant to a police report revealed that the applicant was involved in the alleged unlawful assembly and that a warrant was required to secure his attendance in Court to answer to the charge. No reasons were given as to why the warrant and not a summons was required. There is no indication that the applicant had absconded or that he would not obey a summons. Nor were there any reasons given by the learned Magistrate in issuing the warrant. In the event, I am of the opinion, the issue of a warrant is wrong in law and therefore illegal.

It has to be borne in mind that it is the cardinal principle of law that in criminal cases the provisions of the law must strictly be followed. In the present case, ordinarily a Magistrate may only issue a summons. He cannot issue a warrant unless there is good reason for him to do so. In the absence of any good reason, the issue of a warrant would, to my mind, be wrong and illegal. The applicant was therefore illegally arrested.

I would in the circumstances set aside the warrant. The applicant is not bound to attend the Magistrate's Court on 16 November 1985.

Also found at [1986] 1 CLJ 426